

BEFORE THE FEDERAL ELECTION COMMISSION

COMMISSION
SECRETARIAT

In the Matter of)

2005 SEP 13 A 9:52

MUR 5653)

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY SYSTEM

THE OBSERVER, INC.)

SENSITIVE

GENERAL COUNSEL'S REPORT

The Office of General Counsel concludes that MUR 5653 clearly falls within the media exemption. Therefore, in furtherance of the Commission's priorities and resources, this Office recommends that the Commission should exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

RECOMMENDATION

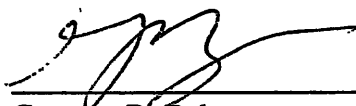
The Office of General Counsel recommends that the Commission dismiss MUR 5653, close the file effective two weeks from the date of the Commission vote; and approve the appropriate letters. Closing the case as of this date will allow CELA and General Law and Advice the necessary time to prepare the closing letters and the case file for the public record.

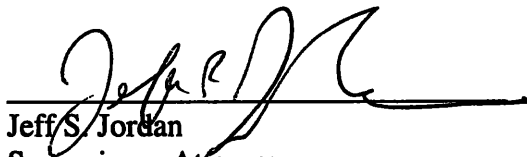
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James A. Kahl
Deputy General Counsel

9/13/05
Date

BY:


Gregory R. Baker
Special Counsel
Complaints Examination
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Jeff S. Jordan
Supervisory Attorney
Complaints Examination
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Attachment:
Narrative in MUR 5653

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5 **MUR 5653**
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7 **Complainant:** Eric J. Ares
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9 **Respondent:** The Observer, Inc.
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11 **Allegations:** The complainant alleges that the Observer, Inc., as a registered section
12 501(c)(3) entity with the Internal Revenue Service, published a newspaper on October 12,
13 2004, which endorsed the Bush-Cheney campaign for President and Vice President. The
14 complainant contends that the endorsement constituted political campaign activity that
15 violated the newspaper's tax-exempt status as a charitable organization.
16

17 **Response:** Respondent replied that the complaint was based on allegations that were
18 outside the jurisdiction of the Federal Election Commission. The respondent also cited to
19 a ruling issued by the Internal Revenue Service that it believes allows separately
20 incorporated 501(c)(3) organizations, which are closely affiliated with colleges, to
21 endorse candidates for public office.
22

23 **Date complaint filed:** April 19, 2005
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25 **Date response received:** May 17, 2005

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